



UNITED STATES DEPARTMENT OF COMMERCE
Office of the General Counsel
Washington, DC 20230

May 14, 2021

The Honorable Roger F. Wicker
Ranking Member
U.S. Senate Committee on Commerce, Science, and Transportation
560 Dirksen Senate Office Building
Washington, DC 20510

Dear Ranking Member Wicker,

I have been asked to respond to your letter to Secretary Raimondo of April 27, 2021, outlining serious allegations concerning the operation of the Department's Investigation and Threat Management Service (ITMS). I, along with another member of the Department, met with your staff on April 30, 2021, to begin discussions on your inquiry, and another staff meeting has been scheduled for today. I want to reiterate in writing what I have communicated to your staff: the Department takes very seriously the allegations of your letter and is committed to addressing them in an expeditious and responsive manner.

As you noted in your letter, the alleged issues concerning ITMS arose before Secretary Raimondo was sworn in as Secretary of Commerce. We agree that ITMS must operate within the bounds of the legal authority granted to it. It must conduct its activities with respect for the rule of law and the rights of employees and all persons involved. With that goal in mind, the Department has taken several steps to address the situation in ITMS.

First, on March 10, 2021 the Department directed ITMS to suspend all criminal/law enforcement investigations. The Department also directed ITMS agents to immediately cease carrying weapons and to return those weapons for safekeeping in the Herbert C. Hoover Building. These actions were the direct result of the Department's receipt and initial review of a report and evidence file from the Department of Commerce Office of the Inspector General (OIG) received just days before.

Second, following the above actions, attorneys within the Department's Office of General Counsel (OGC) initiated a review of the OIG's report and evidence file and began preparing a formal response back to the OIG. OGC determined that the Department needed a comprehensive review of ITMS operations to identify and propose solutions for substantiated management and operational deficiencies. The Department's Chief of Staff ordered the review on April 19, 2021, and that review began on April 26, 2021.

A career Senior Executive Service attorney within OGC is overseeing the review, and a career supervisory law enforcement agent from the Bureau of Industry and Security (BIS) has been tasked with performing the day-to-day work of the review, with additional legal support from OGC. The review is designed to obtain additional information from ITMS staff; document deficiencies in policies, procedures, and training; identify the functions that the Department

needs ITMS to perform; thoroughly analyze the legal authorities granted to the Department and ITMS; and develop a recommended plan for ITMS's future operations.

Third, the Department is consulting with the OIG on this matter. After your staff informed me on April 30, 2021, of an allegation that email searches were inappropriately targeting persons of Chinese or Asian descent, I and another OGC attorney promptly reached out to a staff investigator at the OIG familiar with ITMS to determine if the Department investigating this issue would potentially interfere with ongoing OIG investigations. The OIG investigator explained that the OIG had not yet formed any final conclusions on this allegation based on the evidence they had obtained and explained that the Department could investigate and refer any new evidence to the OIG. The Department is collecting information now to determine whether this allegation is true. In the meantime, the Department has instructed its Office of the Chief Information Officer not to process ITMS email search requests without prior OGC approval.

Fourth, yesterday, the Department suspended all ongoing ITMS investigations. The Department has taken this critical step based on information learned during the review to date, as well as additional information received from your staff. The Department will permit investigations to resume on a case-by-case basis only after OGC reviews the basis for any specific proposed investigation, as well as the proposed investigative steps. The Department will not authorize investigations or investigative steps for which ITMS does not have adequate legal and factual basis.

Fifth, the Department has assured ITMS staff (and others who have expressed similar concerns both within and outside the Department) that their rights under the Congressional Whistleblower Act and other applicable laws, regulations, and policies will be respected, and that they will not be retaliated against for their participation in any past or future inquiry into the issues raised in your letter. In that vein, we very much appreciate your staff referring to the Department individual employees who have expressed retaliation concerns. Attorneys at OGC have reached out to those individuals to reassure them of their rights and reiterate that reprisals against them will not be tolerated. We will continue to relay this message.

The Department expects that at the end of the review it can and will implement a comprehensive solution to the issues raised in your letter. We look forward to working with you on these matters, including potential statutory changes as determined to be necessary.

Sincerely,



Jeremy Licht
Deputy General Counsel for Strategic Initiatives
The United States Department of Commerce

cc: Duane E. Townsend, Special Agent in Charge